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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1620 OF 2018

Abhini Developers Private Limited ... Petitioner
V/s.
Chief Executive Officer and Ors. ... Respondents

Mr. Harinder Toor and Mahesh Menon a/w Mani Thevar i/b. Mahesh Menon and Co. for the Petitioner.

Mr. V.L. Patil for the Respondent No.2.

Mr. Rajeev Carvalho a/w Ms. Sabeena Mahadik, Mr. Mayur Khandeparkar, Mr. Pankaj Uttaradhi and Ms. Yashvanti Chandra for the Respondent No.7.

Ms. Vandana Mahadik for the Respondent – BMC.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 6th AUGUST 2018.

P.C.:

1 Heard the learned counsel appearing for the petitioner. On 18th July 2018, attention of the Court was invited to paragraph 55 of this petition. Paragraph 55 reads thus :-

“55. The Petitioner further submits that MLS's from Nagpur whom the Petitioner do not wish to name were also trying to interfere in the said slum scheme under implementation and raised question at alleged irregularities in the slum scheme under implementation by the Petitioner in the Assembly held on 19th April, 2012, without having any concern of the slum scheme being implemented in Mumbai and the said Shirodkar as he also belongs to Nagpur. From what is stated hereinabove, the Petitioner submits that entire action taken against the Petitioner is politically motivated and at the behest of the said Atul Shirodkar.”

(underline supplied)

2 Paragraphs 2 to 4 of the order dated 18th July 2018 passed by this Court reads thus:-

- “2. Our attention is invited to the averments made in paragraph 55 of the Petition. The learned Counsel appearing for the Petitioner states that the Petitioner will disclose the names of the members of the Legislative Assembly regarding whom the averments have been made in paragraph 55 of the Petition and will implead them as parties.
3. We, accordingly, direct the Petitioner to carry out necessary amendment to paragraph 55 by mentioning the names of the members of Legislative Assembly and also to implead them as party Respondents.
4. Amendment shall be carried out within a period of one week from the date on which this order is uploaded.”

3 Today, when the matter is called out, we find that instead of complying with the said order, the advocate for the petitioner has deleted the entire paragraph 55. The learned counsel appearing for the petitioner states that the petitioner does not want to press what is stated in paragraph 55. However, he tenders on record a letter dated 2nd November 2009 addressed by a political leader to the Chief Executive Officer of the Slum Rehabilitation Authority, Bandra, Mumbai. The said letter is taken on record and marked 'L1' for identification.

4 In paragraph 55, the petitioner has made a very serious allegation that MLAs from Nagpur were trying to interfere in the slum scheme subject matter of this petition. When this serious allegation was pointed out, the petitioner stated before the Court on 18th July 2018 that

the names of the members of the Legislative Assembly regarding whom averments have been made in paragraph 55 of this petition will be disclosed and that those members will be impleaded as parties. It is only in the light of this statement that this Court granted permission to the petitioner to carry out necessary amendment to paragraph 55 for incorporating the names of the members of the Legislative Assembly and also to implead them as party respondents. From the statements made across the bar today, it appears that now the petitioner does not desire to disclose the names of the members of the Legislative Assembly who are referred to in paragraph 55 of this petition by making a very serious allegation against them.

5 Gross impropriety and illegality has been committed by the petitioner by not only failing to carry out amendment as per the order dated 18th July 2018 but by deleting paragraph 55 without permission of the Court. Admittedly, this Court did not grant permission to delete the entire paragraph 55. The petitioner or petitioner' advocate had no authority to delete paragraph 55 of the petition in which serious allegations have been made against the members of the Legislative Assembly. In fact, in support of the said allegations, today the petitioner has tendered across the bar the aforesaid letter dated 2nd November 2009.

6 Writ jurisdiction under Article 226 of the Constitution of India is always discretionary and equitable. Firstly, the petitioner has chosen to make serious allegations against members of the Legislative Assembly from Nagpur in paragraph 55 of the petition. This allegation was made by expressly stating that the petitioner does not wish to mention

their names. On 18th July 2018, on statement made by the learned counsel appearing for the petitioner, on instructions, which is noted in paragraph 2 above, leave to amend for incorporating the names of the members of Legislative Assembly in paragraph 55 and for impleading the said persons as parties was granted. The petitioner committed breach of the order dated 18th July 2018 by refusing to comply with the said order. We have perused the endorsement made by the petitioner on 24th July 2018 on the top of the amendment carried out by him for deleting paragraph 55. The said endorsement reads thus :-

“As per order dated 18th July 2018 deleted the paragraph No.55”.

The order dated 18th July 2018 not only does not permit the deletion of the paragraph but the said order contemplates incorporation of names of the members of the Legislative Assembly in the said paragraph. However, such a misleading and factually incorrect endorsement has been made by the petitioner while carrying out amendment by deleting paragraph 55. The endorsement suggests that under the order dated 18th July 2018, this Court had permitted deletion of paragraph No.55. In fact, this is a fit case where the Court could have initiated an action for committing criminal contempt under the Contempt of Courts Act, 1971 against the petitioner. The petitioner had no business to carry out the amendment which was not permitted and on the top of it to mention that such amendment was permitted by the Court. The letter marked as 'L1' tendered today shows that the petitioner is in a position to disclose the name of atleast one member of the Legislative Assembly but the petitioner wants to avoid doing so.

7 Writ jurisdiction under Article 226 of the Constitution of India is not meant for such litigants. On the aforesaid grounds, we decline to entertain this petition under Article 226 of the Constitution of India. The petition is rejected.

8 After this order was dictated in open Court, the learned counsel appearing for the petitioner, on instructions, seeks permission to unconditionally withdraw the petition. In normal course, we would have been justified in rejecting this prayer in view of the reasons recorded above. The learned counsel appearing for the petitioner states that in view of the observations made above, the petitioner may be permitted to withdraw the petition. Such extraordinary request cannot be accepted without imposing costs on the petitioner. The amount of costs is quantified at Rs.75,000/-. We, accordingly, by recalling the order of rejection, dismiss the petition as unconditionally withdrawn. However, we direct the petitioner to pay the costs quantified at Rs.75,000/- to the Maharashtra State Legal Services Authority. Amount of costs shall be paid within a period of four weeks from today. For reporting compliance regarding payment of costs, the petition shall be listed under the caption of directions on 7th September 2018.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)